

# Council Report



Listening Learning Leading

Report of Head of Legal and Democratic Services and Monitoring Officer

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To: Council

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## AGENDA ITEM NO 9

## Localism Act: standards of conduct

### Recommendations

That Council

1. adopts the code of conduct set out in appendix 1 to this report as the code of conduct which is expected of councillors and co-opted members of South Oxfordshire District Council with effect from 1 July 2012, or such later date as may be specified in regulations for the implementation of the new standards framework, and in place of the council's existing code of conduct;
2. authorises the monitoring officer to add to the code of conduct the relevant text from the secondary legislation concerning disclosable pecuniary interests;
3. designates the monitoring officer as the proper officer for receipt of code of conduct complaints and the audit and corporate governance committee as the committee responsible for dealing with allegations about potential breaches of the code of conduct that the monitoring officer considers it inappropriate for officers to deal with;
4. approves the amendments to the constitution arising from the new standards framework as set out in the electronic copy of the constitution on the council's website for the meeting of the council on 17 May 2012;
5. subject to 1 to 4 above, authorises the Head of Legal and Democratic Services to include the code of conduct in the constitution and to make any consequential amendments to the constitution arising from the adoption of the code including minor or consequential amendments required for clarification, consistency and compliance with the council's style guide;

6. appoints Carole Burchett and David Lockie as independent persons for a period consistent with the anticipated secondary legislation that sets out the terms of such appointments during the transitional period to the new standards of conduct framework.

## **Purpose of Report**

1. This report sets out the background to and current position concerning the revised code of conduct for councillors. It invites council to adopt the revised code of conduct with effect from 1 July 2012, make amendments to the council's constitution as a result of adoption of the new standards framework, agree the appointment of the proper officer for dealing with code of conduct complaints and appoint two independent persons who will act as consultees on code of conduct complaints.

## **Strategic Objectives**

2. High standards of conduct underpin all the council's work and the achievement of all its strategic objectives,

## **Background**

3. The Localism Act 2011 provides for the abolition of the present arrangements that promote high standards of conduct on the part of councillors and co-optees on the council's committees. The features of the present arrangements (introduced under the Local Government Act 2000) include a national mandatory code of conduct, a statutory standards committee with parish and independent representatives (with statutory sanctions available to it) and a national body, Standards for England. All of those features are repealed by the Localism Act 2011 on a date to be fixed by secondary legislation (but announced as likely to be 1 July 2012).
4. The Localism Act 2011 does, however, retain the duty to promote and maintain high standards of conduct by councillors and co-opted members. It also requires the council to adopt both a code of conduct and arrangements for the handling and determination of allegations of breaches of the adopted code.

## **THE CODE OF CONDUCT**

5. The Localism Act 2011 (the Act) does not promote or require the adoption of a single national code of conduct. The Act repeals the current ten general principles and the model code of conduct. However, the council and parish councils must adopt a code governing councillors' and voting co-opted councillors' conduct when acting as members of the council, which must be consistent with the following seven principles:
  - Selflessness;
  - Integrity;
  - Objectivity;
  - Accountability;
  - Openness;
  - Honesty;
  - Leadership.

6. Regulations yet to be made under the Act will require the registration and disclosure of 'disclosable pecuniary interests', which we expect will be similar to current prejudicial interests.
7. Although a national code will no longer exist, the monitoring officers of all the Oxfordshire councils share the same view of the importance of having a single code adopted by the councils and by the town and parish councils in their respective areas. That view is also endorsed by the Oxfordshire Association of Local Councils (the representative body for parish councils throughout Oxfordshire). A county wide code will be of benefit to dual-hatted members who will only need to familiarise themselves with one code of conduct and monitoring officers, who will have a role in the consideration of complaints, will be able to deal more effectively with complaints when only one code is in existence.
8. To allow adoption of a code of conduct to be effective across the county by 1 July, but without sight of the secondary legislation, the monitoring officers of the councils in Oxfordshire have partially drafted a code of conduct that is consistent with the seven general principles and includes the Department for Communities and Local Government's *illustrative text* on disclosable pecuniary interests. As stated, regulations yet to be made under the Act will require the registration and disclosure of disclosable pecuniary interests. Council is therefore asked to adopt the code of conduct attached at appendix 1 to this report and allow the monitoring officer to insert wording on disclosable pecuniary interests from the secondary legislation when it becomes available.

#### ARRANGEMENTS FOR DEALING WITH CODE OF CONDUCT COMPLAINTS

9. The Localism Act 2011 provides for the abolition of the present standards committee arrangements. The features of the present arrangements (introduced under the Local Government Act 2000) included a statutory standards committee with parish and independent representatives (with statutory sanctions available to it). Those features are repealed by the Localism Act 2011 on a date to be fixed by secondary legislation (but announced as likely to be 1 July 2012).
10. However, the Localism Act 2011 does require the council to adopt arrangements for the handling and determination of complaints of breaches of the adopted code.

#### ARRANGEMENTS FROM MAY TO JUNE 2012

11. Insofar as the arrangements are concerned for the handling and determination of complaints, this council will need to appoint a standards committee under the Local Government Act 2000 until such time that the new arrangements for standards of conduct come into effect. A separate report on the agenda for this meeting deals with the appointments to committees and panels for 2012/13.

#### ARRANGEMENTS WITH EFFECT FROM 1 JULY

12. After 1 July, or such other date as may be specified in the regulations, no statutory requirement exists to maintain a standards committee. However, the Localism Act requires the adoption of arrangements under which the council can investigate allegations and make decisions on any potential breach of the code of conduct.
13. As well as repealing the requirement for a statutory standards committee the Act repeals the requirements for separate assessment and review panels of the

standards committee to decide what action to take on receipt of code of conduct complaints.

14. As the statutory provisions will no longer give a standards committee or the monitoring officer special powers to deal with complaints, council will need to delegate appropriate powers.
15. If a new committee was convened to deliver the standards function it would need to be within the council's political balance and could not include voting co-opted members such as parish or independent representatives. Since July 2011 the full standards committee has met on only two occasions because it has had a lesser role as a result of governmental changes and the subsequent abolition of Standards for England. Because of the light workload of the existing standards committee, officers recommend that the arrangements for dealing with code of conduct complaints are delegated to the monitoring officer rather than to a new committee that would rarely meet. However, the council will need to deal with code of conduct complaints that the monitoring officer considers it inappropriate for officers to deal with, perhaps where there is a conflict of interest or where a complaint cannot be resolved by officers and merits a hearing following an investigation. Officers consider that the most appropriate committee to take on this function is the audit and corporate governance committee, because of its role in maintaining good governance and because it already has a role in dealing with the corporate complaints procedure. The audit and corporate governance committee will agree the procedures for dealing with complaints.
16. Draft terms of reference for the audit and corporate governance committee are attached at appendix 2. At its meeting on 19 April the standards committee asked that any committee's work in relation to the code of conduct was identifiable and a discrete function of the committee fulfilling that function. Officers consider that the terms of reference at appendix 2 fulfil this request.

#### INDEPENDENT PERSONS AND DEALING WITH MISCONDUCT COMPLAINTS

17. The Act creates a new category of independent person (IP) who the monitoring officer must consult at various stages of the process when dealing with allegations of misconduct by councillors. Although the Act prevents existing co-opted independent members from serving as IPs for the next five years we understand that, because of the difficulties faced by councils in recruiting independent persons, regulations will allow the existing independent representatives to become independent persons for a transitional period, the terms of which will be set out in the awaited regulations. Council is therefore asked to extend the appointment of Mrs Carole Burchett and Mr David Lockie for a term as specified in the regulations. During the transitional period officers will make arrangements to advertise the posts in accordance with the requirements in the Act and the regulations.

#### AMENDMENTS TO THE CONSTITUTION

18. Officers have amended the constitution throughout to reflect the changes brought about by the Localism Act as set out in this report. Further amendments will be required to the code of conduct itself on receipt of the secondary legislation and council is asked to authorise the monitoring officer to make any consequential amendments to the constitution arising from the adoption of the code and also to make any minor or consequential amendments for clarification, consistency and compliance with the council's style guide.

## **Financial Implications**

19. The cost of providing training will be met from existing budgets.

## **Legal Implications**

20. The council must adopt a revised code of conduct before 1 July 2012, or such other date as specified in the regulations, and must also make arrangements for dealing with code of conduct complaints. Adopting the Oxfordshire model code without amendment will help councillors and officers to effectively deal with code of conduct complaints. I am advising parish councils of their legal obligations and taking steps to ensure that they comply with them.

## **Human Resource Implications**

21. Adoption of the revised code and provision of advice on it will be carried out within existing resources. Officers will provide training.

## **Conclusion**

22. I recommend council to adopt the code of conduct set out in appendix 1 to this report as the code of conduct which is expected of councillors and co-opted members of South Oxfordshire District Council with effect from 1 July 2012, or such other date as specified in the regulations, and in place of the council's existing code of conduct. I also recommend council appoints me as the proper officer for receipt of code of conduct complaints and that the audit and corporate governance committee becomes the committee responsible for dealing with code of conduct complaints when the monitoring officer is unable to determine such complaints; authorises me to include the code of conduct in the constitution and to make any consequential amendments to the code of conduct on receipt of the regulations defining disclosable pecuniary interests and authorises me to amend the constitution arising from the adoption of the code of conduct; and appoints Carole Burchett and David Lockie as independent persons during the transitional period to the new code of conduct framework.

## **Background papers**

None

# Code of conduct

1. This code of conduct is adopted pursuant to the council's duty to promote and maintain high standards of conduct by members and co-opted members<sup>1</sup> of the council.
2. This code applies to you as a member or co-opted member of this council when you act in that role and it is your responsibility to comply with the provisions of this code.

## SELFLESSNESS

3. You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

## OBJECTIVITY

4. In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

## ACCOUNTABILITY

5. You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate to your office.

## OPENNESS

6. You must be as open as possible about your actions and those of your council, and must be prepared to give reasons for those actions.

## HONESTY AND INTEGRITY

7. You must not place yourself in situations where your honesty and integrity may be questioned, must not behave improperly and must on all occasions avoid the appearance of such behaviour.

## LEADERSHIP

8. You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

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<sup>1</sup> A "co-opted member" for the purpose of this code is, as defined in the Localism Act section 27 (4) "a person who is not a member of the council but who

a) is a member of any committee or sub-committee of the council, or

b) is a member of, and represents the council on, any joint committee or joint sub-committee of the council;

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub committee".

## GENERAL OBLIGATIONS

9. You must treat others with respect and ensure that you are aware of and comply with all legal obligations that apply to you as a member or co-opted member of the council and act within the law;
10. You must not bully any person.
11. You must not do anything that compromises or is likely to compromise the impartiality of those who work for, or on behalf of the council.
12. You must not disclose information given to you in confidence by anyone, or information acquired by you of which you are aware, or ought reasonably to be aware, is of a confidential nature except where:
  - (i) you have the consent of a person authorised to give it;
  - (ii) you are required by law to do so;
  - (iii) the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person, or
  - (iv) the disclosure is:
    - a) reasonable and in the public interest;
    - b) made in good faith and in compliance with the reasonable requirements of the council.
13. You must not improperly use knowledge gained solely as a result of your role as a member for your own personal advantage.
14. When making decisions on behalf of or as part of the council you must have regard to any professional advice provided to you by the council's officers.
15. When using or authorising the use by others of the resources of the council:
  - (i) you must act in accordance with the council's reasonable requirements;
  - (ii) you must make sure that you do not use resources improperly for political purposes and do not use them at all for party political purposes.

## REGISTERING AND DECLARING INTERESTS

16. You must, within 28 days of taking office as a member or co-opted member, notify the council's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.
17. You must disclose the interest at any meeting of the council at which you are present, where you have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'<sup>2</sup>.

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<sup>2</sup> A "sensitive interest" is described in the Localism Act 2011 as a member or co-opted member of a council having an interest, and the nature of the interest being such that the member or co-opted member, and the council's monitoring officer, consider that disclosure of the details of the interest could

18. Following any disclosure of an interest not on the council's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.
19. Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. You must withdraw from the room or chamber when the meeting discusses and votes on the matter.



# **Article 9 - The audit and corporate governance committee**

## **Audit and corporate governance committee**

1. The council will establish an audit and corporate governance committee.

## **Role and function**

2. The audit and corporate governance committee will have the following roles and functions:
  - (a) Approval of the council's statement of accounts.
  - (b) Ensuring the effective scrutiny of the treasury management strategy, policies and performance.
  - (c) Receiving the district auditor's management letter and make any recommendations thereon.
  - (d) Receiving external and internal audit reports and making any recommendations thereon.
  - (e) Considering risk management issues and making any recommendations thereon.
  - (f) Approving the annual governance statement.
  - (g) Considering governance matters and making any recommendations thereon.
  - (h) Considering complaints under the council's complaints procedure.
  - (i) The overview of Ombudsman investigations.
  - (j) The determination of enhanced benefits in respect of redundancies and early retirements.
  - (k) Agreeing human resources matters relating to the Local Government Pension Scheme. These include changes to the scheme requiring local decisions; responding to consultations for scheme amendments; applying discretionary termination payments to staff, in cases of early retirement on efficiency grounds; and amending or implementing new Council policies on pensions (eg discretionary payments policy).
  - (l) The overview of the council's whistleblowing policy.
  - (m) The overview of the standards of conduct framework for councillors and any co-opted members.
  - (n) Dealing with code of conduct complaints about councillors.
  - (o) The exercise of (m) and (n) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils.

## **Code of conduct and corporate complaints**

3. The audit and corporate governance committee may appoint sub-committees comprising three eligible members of the committee to determine matters in relation to corporate complaints or code of conduct complaints referred by the monitoring officer.

## **Complaint sub-committees (panels)**

4. The audit and corporate governance committee:
  - (a) has responsibility for appointing its own sub-committees (known as panels) to make decisions on code of conduct or corporate complaints except where the chairman (or vice-chairman) of the audit and corporate governance committee agrees that the whole committee should be convened when a complaint merits consideration by the full committee.
  - (b) authorises the head of legal and democratic services to invite an appropriate panel to consider corporate complaints or code of conduct complaints having regard to members' availability and eligibility to take part;
  - (c) will agree its own procedures for it (or its panels) to deal with corporate complaints or code of conduct complaints

## **Appointment and membership**

5. The audit and corporate governance committee shall:
  - (a) appoint panels comprising any three members, or their appointed substitutes, of the audit and corporate governance committee;
  - (b) appoint each member or substitute of the audit and corporate governance committee to serve on any panel which is convened so as to include her or him in its membership;
  - (c) wherever possible, a panel comprising the chairman or vice-chairman of the committee plus two other members of the committee will consider complaints, but that this should not affect the principle that any three members or their substitutes of the committee will constitute a properly appointed panel;
  - (d) A fourth member should be on standby for each hearing in case one of the three members cannot take part for any reason;

## **Terms of reference**

6. To discharge all functions relating to matters referred to the committee or to its sub-committees in relation to corporate complaints or under the code of conduct complaints procedure by the council's monitoring officer.
7. Any panel will be known as a complaints panel.